

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA,  
NORTHERN DIVISION**

**TERA McMILLAN**

**Plaintiff,**

**vs.**

**ALABAMA DEPARTMENT OF  
YOUTH SERVICES et al.,  
Defendant.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Civil Action No: 2:07-cv-00001-WKW**

**RESPONSE TO MOTION TO COMPEL**

In response to the Plaintiff's motion to compel, the Defendant submits the following:

1. INTERROGATORY NO. 10.

Michael Hardy's personnel file (Bates stamped documents no. 334 through 510) was provided. However, the exhibits from the fact-finding hearing, listed below, were inadvertently stored in a separate area from the 3,597 copies made by counsel for Defendant and received by the Plaintiff and the approximately 9 banker's boxes of documents made available to and reviewed by Plaintiff's counsel. (See the list of documents previously produced attached hereto as Exhibit 1.)

Exhibits from fact-finding hearing:

7/19/05, memo to J. Wood from D. Spann

7/14/05, memo to D. Spann from M. Hardy

Policy and Procedures, 3.13.1

7/14/05, memo to D. Spann from M. Hardy

6/21/05, memo to Whom It may concern from Paige Hall Staff

6/21/05, memo, to Whom It May Concern from A. Harvest and J. Ellis

11/08/05, memo to Whom It May Concern from A. Ford

Memo from R. Lee

7/14/05, memo to D. Spann from M. Hardy

4/20/00, memo to M. Hardy from R. Ray

1/18/07, memo to D. Spann from W. Samuel

6/23/97, memo to J. Tyler from M. Hardy

These documents are being Bates stamp numbered and will be provided.

2. INTERROGATORY NO. 11

In addition to the statements provided to the Plaintiff (see Exhibit 1), Counsel for the Defendant interviewed the following prior to the hearing on the appeal to the state personnel board of the termination of Defendant Michael Hardy.

Sylvesta Lee - DYS, Unit Manager,

1000 Industrial School Road, Mt. Meigs, AL 36057

Debra Spann - DYS, Personnel Manager,

1000 Industrial School Road, Mt. Meigs, AL 36057

Derrick Boiling - DYS, Youth Svc. Counselor

Birdie Lee Montgomery - Tera A. McMillan Mother,

312 Adler Dr., Montgomery, Alabama 36116

Vanessa Lynn Hall - DYS, Youth Svc. Aide,

1000 Industrial School Road, Mt. Meigs, AL 36057

Reginald Boswell - DYS, Youth Svc. Aide

1000 Industrial School Road, Mt. Meigs, AL 36057

3. INTERROGATORY NO. 12.

The undersigned is not aware of any information given to such attorney that differed from that given in the original investigation concerning the sex harassment charge filed by Plaintiff against Defendant Michael Hardy and by whom same was given. This question clearly asks for Counsel for the Defendant to produce work product, and counsel for Defendant objects to the request to produce work product for the purpose of providing it to counsel for Plaintiff through discovery. Counsel for Plaintiff should be capable of viewing the documents and determining whether any contradictions exist.

4. INTERROGATORY NO. 15.

DYS denies that sexual harassment occurred toward the Plaintiff. The explanation for this denial is described in detail in the recommended order to the State Personnel Board dated May 8, 2006.

5. INTERROGATORY NO. 16.

DYS intends to make all files available and in fact made available approximately 3,597 documents copied by DYS staff for the Plaintiff. It does appear however that documents responsive to this question were in another location and were not reviewed by or provided to the Plaintiff. These documents include a portion of the file for the state personnel hearing, discussed above. They are being Bates stamp numbered and will be produced.

6. PRODUCTION REQUEST NO. 22.

The following documents have been provided:

- McMillan personnel file (provided to Plaintiff, Bates no.237 through 242)
- Supervisor's personnel file on McMillan (provided to Plaintiff, Bates no. 3465-3569)
- EEOC Charges (provided as part of Plaintiff's personnel file, (Bates nos. 776 through 783)

However, the following documents were not made available and are being Bates stamp numbered and will be provided. The documents were inadvertently omitted because they were in another location.

- Ms. Spann's material (including the interview with Michael Hardy) were not made available

In addition, the Defendant waives the privilege for the following:

- Special Investigator's investigation of Plaintiff's EEOC 130-2006-01336, dated March 31, 2006 and EEOC dated February 27, 2007.

These documents are being Bates stamped and will be provided to counsel for Plaintiff.

7. PRODUCTION REQUEST NO. 23.

The following documents have been provided:

- Hardy personnel file (provided to Plaintiff, Bates no.334 through 510)

However, the following documents were inadvertently omitted because they were not stored in the same location as the approximately 3,597 documents which were copied at the expense of DYS and provided to the Plaintiff or the many bankers boxes of documents made available and reviewed by counsel for the Plaintiff. These documents are being Bates stamp

numbered and will be provided.

- Fact-finding hearing by Marcia Calender

November 15, 2005

- Recommended order to the State Personnel Board dated August 1, 2007.
- 7/19/05, memo to J. Wood from D. Spann
- 7/14/05, memo to D. Spann from M. Hardy
- Policy and Procedures, 3.13.1
- 6/21/05, memo to Whom It may concern from Paige Hall Staff
- 6/21/07, memo, to Whom It May Concern from A. Harvest and J. Ellis
- 11/08/05, memo to Whom It May Concern from A. Ford
- Handwritten letter “To Whom It May Concern” from R. Lee of Reinhardt Motors
- 4/20/00, memo to M. Hardy from Richard Ray
- 1/18/00, memo from D. Spann from M. Hardy
- 1/23/97, memo to J. Tyler from M. Hardy

8. PRODUCTION REQUEST NO. 24.

See the response to production request no. 23 above.

9. PRODUCTION REQUEST NO. 32.

With regard to the incompleteness of the response, see the above responses to production requests nos. 22 and 23. In addition, the Defendant waives the privilege and will make available the following:

- Special investigator Staton’s investigation of Plaintiff’s investigation  
March 31, 2006 (see production no. 22)

The investigator's file is voluminous. It is being Bates stamp numbered and will be provided.

10. PRODUCTION REQUEST NO. 33.

Same as number 32 above. In addition,

- Ms. Spann's memo has been included in production request no. 23 above.
- Supervisor's file on McMillan were provided to Plaintiff, Bates no. 3465-3569

11. PRODUCTION REQUEST NO. 36.

As stated above, the following additional documents also responsive to request number 36 are being made available:

- Ms. Spann's memos (see production request no. 23.)
- Marcia Calendar's fact-finding hearing letter to Mr. Wood, dated December 8, 2005. (see production request no. 23)

12. PRODUCTION REQUEST NO. 37.

As stated above, the following additional documents are being made available:

- Special Investigator investigation of Plaintiff's Alleged Discrimination and Retaliation filed dated March 31, 2006, attached. Production request no. 22
- Correspondence (Marcia's letter to Wood, dated December 8, 2005) production request no. 36

13. PRODUCTION REQUEST NO. 38.

The undersigned objects to the production of complaints for sexual harassment, sex/gender discrimination, retaliation and/or any EEOC or OCR complaints filed against current or former employees of DYS on the grounds that it is overly broad and unduly burdensome. DYS operates facilities throughout the State of Alabama and there is no possible relevance to production of such confidential and privileged information regarding individuals who have no connection to this case whatsoever.

Respectfully submitted,

**s/ T. Dudley Perry Jr.**

T. Dudley Perry, Jr.

Bar Number: 3985-R67T

General Counsel

Alabama Department of Youth Services

Post Office Box 66

Mt. Meigs, AL 36057

Telephone: (334) 215-3803

Fax: (334) 215-3872

E-Mail: [dudley.perry@dys.alabama.gov](mailto:dudley.perry@dys.alabama.gov)

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of November, 2007, I electronically filed the foregoing, RESPONSE TO MOTION TO COMPEL with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jimmy Jacobs

E-mail: [jacobslawoffice@charter.net](mailto:jacobslawoffice@charter.net)

Attorney At Law

143 Eastern Boulevard

Montgomery, AL 36117

Tel: (334) 215-1788

Fax: (334) 215-1198

**s/ T. Dudley Perry Jr.**

T. Dudley Perry, Jr.

Bar Number: 3985-R67T  
General Counsel  
Attorney for the Defendant



## McMillian vs. DYS

<i>Bates Number</i>	<i>Subject</i>	<i>Request for Production</i>
000002-000034	Dismissal Appeal & ALJ Recommended Order	#15
000035-000111	Leave Reports (DYS 21) ITU and Mt. Meigs	#29
000112-000157	Rosters of employees attending training 2005-2007	#31
000158-000166	Employee Address Information (none for Lisa May)	#34
000167-000173	Employee Leave Balance (McMillian)	#35
000176-000183	EEOC Charges (Both) and Dismissal and Notice of Rights	#22
000184-000186	Lee's Letter of Warning, December 6, 2005 re: Failure to attend training and staff meeting	#22
000187-000220	Staton Interview of McMillian, December 1, 2006 (Retaliation)	#22
000237-000242	McMillian's Personnel File	#22
000243-000333	Hardy's Administrative Hearing, November 15, 2005	#22
000334-000510	Hardy's Personnel File	#22
000511-000521	Hardy and McMillian Leave Request Forms (DYS 24)	#30
000522-000527	EEOC Charge (Retaliation)	#22
000528-000635	Staton Interview of McMillian, Feb 16, 2006 (Sex Harassment)	#22
000636-000640	Staton Interview of Hammond, March 24, 2006	#22
000641-000644	Staton Interview of Elijah Hood, March 15, 2006	#22
000645-000654	Staton Interview of Gregory Webster, March 14, 2006	#22
000655-000673	Staton Interview of Veronica Harris, March 8, 2006	#22
000674-000687	Staton Interview of Phyllis Rankins, March 10, 2006	#22
000688-000700	Staton Interview of Sylvesta Lee, March 9, 2006	#22
000702-000703	Leave Reports (DYS 21) ITU	#29
000712-000713	McMillian Leave Request Forms (DYS Form 24) Dec 05, Jan 06	#30
000714	Rankin's Letter to McMillian re: Concerns about employee Appraisal	#22
000715-000723	McMillian's Performance Preappraisals and Appraisals 03/01/05-03/01/07	#22
000722	Lee's Letter of Warning, December 6, 2005	#22

Alcan  
Interview

000723	McMillian's Performance Appraisal 03/01/04-03/01/05	#22	
000724-000729	Memos For Record from Lee, Hammond, Whited, and Washington re: Contact with McMillian	#22	
000730	Lee's Contact with Staff memo Jan 20, 2006 re: Insubordination	#22	
000731	Lee's Contact with Staff memo Nov 29, 2005 re: Failure to Attend	#22	
000732	Lee's Memo re: Mandatory A Training 2006	#22	
000733	McMillian's Memo For Record re: Dispute Performance Eval	#22	
000734-000735	McMillian's Performance Preappraisal (partial) 03/01/05-03/01/06	#22	
000736-000737	Subpoenas to appear at ALJ Hearing	#22	
000738-000740	McMillian training certificates and one pay raise notice	#22	
000741	McMillian's Performance Appraisal (partial) 03/01/6-03/01/07	#22	
000742	Rankin's Memo to Spann re: McMillian's refusal to sign Appraisal	#22	
000743	Lee's Letter of Warning, December 6, 2005 re: Failure to attend training and staff meeting	#22	
000744	Performance Appraisal (partial) 03/01/05-03/01/06	#22	
000745-000761	Misc forms from McMillian's personnel file; most duplicative	#22	
000762-000775	McMillian's Performance Preappraisals and Appraisals 10/21/02-03/01/07	#22	
000776-000783	EEOC Charges (Both) and Dismissal and Notice of Rights	#22	
000784-000785	Subpoenas to appear at ALJ Hearing	#22	
000786-000848	Security Affidavit Count for 3/4/06 and 3/5/06	#25	
000849-000920	Daily Time & Attendance Report ITU 07/01/06-09/15/06	#26	
000921-000935	Daily Time & Attendance Report ITU 06/16/06-06/30/06	#26	
000936-000950	Daily Time & Attendance Report ITU 06/01/06-06/15/06	#26	
000951	Daily Time & Attendance Report ITU 05/16/06	#26	
000952-000966	Daily Time & Attendance Report ITU 05/17/06-05/31/06	#26	
000967-000996	Daily Time & Attendance Report ITU 04/16/06-05/15/06	#26	
000997-001011	Daily Time & Attendance Report ITU 04/01/06-04/15/06	#26	
001012-001023	Daily Time & Attendance Report ITU 03/18/06-03/31/06	#26	
001024-001051	Daily Time & Attendance Report ITU 03/04/06-03/17/06	#26	
001052-001065	Daily Time & Attendance Report ITU 03/04/06-03/17/06	#26	Duplicates

001066-001076	Daily Time & Attendance Report ITU 02/18/06-02/28/06	#26	Duplicates
001077-001080	Daily Time & Attendance Report ITU 03/01/06-03/03/06	#26	
001081-001108	Daily Time & Attendance Report ITU 02/28/06-03/03/06	#26	Duplicates
001095-001105	Daily Time & Attendance Report ITU 02/18/06-02/28/06	#26	
001109-001138	Daily Time & Attendance Report ITU 04/01/06-04/30/06	#26	Duplicates
001139-001168	Daily Time & Attendance Report ITU 04/01/06-04/30/06	#26	Duplicates
001169-001183	Daily Time & Attendance Report ITU 05/01/06-05/15/06	#26	Duplicates
001184-001198	Daily Time & Attendance Report ITU 05/01/06-05/15/06	#26	Duplicates
001199-001227	Daily Time & Attendance Report ITU 05/16/06-06/15/06	#26	Duplicates
001228-001242	Daily Time & Attendance Report ITU 06/01/06-06/15/06	#26	Duplicates
001243-001257	Daily Time & Attendance Report ITU 06/16/06-06/30/06	#26	Duplicates
001258-001272	Daily Time & Attendance Report ITU 06/16/06-06/30/06	#26	Duplicates
001273-001298	Daily Time & Attendance Report ITU 07/01/06-07/30/06	#26	Duplicates
001299-001326	Daily Time & Attendance Report ITU 07/01/06-08/01/06	#26	Duplicates
001325-001386	Daily Time & Attendance Report ITU 08/01/06-09/30/06	#26	Duplicates
<b>Missing Daily Time &amp; Attendance Report ITU 06/25/05-02/17/06; 07/08/05-07/10/05; 10/01/06-12/31/06</b>			
<b>Missing Daily Time &amp; Attendance Report Paige Hall from 01/01/05 - 06/24/05</b>			
001387-001397	Security Gate Log of employees entering and leaving 06/20/06	#25	
001398-001409	Security Gate Log of employees entering and leaving 06/21/06	#25	
001410-001419	Security Gate Log of employees entering and leaving 06/19/06	#25	missing several pgs
001420-001431	Security Gate Log of employees entering and leaving 06/18/06	#25	
001432-001442	Security Gate Log of employees entering and leaving 06/16/06	#25	
001443-001454	Security Gate Log of employees entering and leaving 06/17/06	#25	
001455-001466	Security Gate Log of employees entering and leaving 06/15/06	#25	
001467-001480	Security Gate Log of employees entering and leaving 06/14/06	#25	
001481-001492	Security Gate Log of employees entering and leaving 06/13/06	#25	
001493-001504	Security Gate Log of employees entering and leaving 06/09/06	#25	
001505-001516	Security Gate Log of employees entering and leaving 06/10/06	#25	
001517-001528	Security Gate Log of employees entering and leaving 06/11/06	#25	
001529-001538	Security Gate Log of employees entering and leaving 06/12/06	#25	missing last two pgs
001539-001548	Security Gate Log of employees entering and leaving 06/07/06	#25	out of order first pg 1609

001549-001560	Security Gate Log of employees entering and leaving 06/08/06	#25
001561-001572	Security Gate Log of employees entering and leaving 06/04/06	#25
001573-001584	Security Gate Log of employees entering and leaving 06/02/06	#25
001585-001596	Security Gate Log of employees entering and leaving 06/05/06	#25
001597-001608	Security Gate Log of employees entering and leaving 06/06/06	#25 1609 see 6/7/06
001609-001610	Security Gate Log of employees entering and leaving 06/07/06	#25
001623-001634	Security Gate Log of employees entering and leaving 06/02/06	#25
001611-001622	Security Gate Log of employees entering and leaving 06/01/06	#25
001647-001657	Security Gate Log of employees entering and leaving 05/15/06	#25
001635-001646	Security Gate Log of employees entering and leaving 05/11/06	#25
001658-001669	Security Gate Log of employees entering and leaving 05/10/06	#25
001670-001681	Security Gate Log of employees entering and leaving 05/09/06	#25
001682-001704	Security Gate Log of employees entering and leaving 05/08/06	#25
001694-001705	Security Gate Log of employees entering and leaving 05/07/06	#25
001706-001717	Security Gate Log of employees entering and leaving 05/06/06	#25
001718-001729	Security Gate Log of employees entering and leaving 05/05/06	#25
001730-001741	Security Gate Log of employees entering and leaving 05/03/06	#25
001742-001753	Security Gate Log of employees entering and leaving 05/04/06	#25
001754-001765	Security Gate Log of employees entering and leaving 05/02/06	#25
001766-001777	Security Gate Log of employees entering and leaving 05/01/06	#25
001778-001789	Security Gate Log of employees entering and leaving 06/22/06	#25
001790-001801	Security Gate Log of employees entering and leaving 11/11/05	#25
001802-001813	Security Gate Log of employees entering and leaving 11/29/05	#25
001814-001849	Training material re: Student Self-Harm 04/26/07	#31
001850-002136	Training schedules and sign-in sheets	#31
001959-001999	ITTU Leave Request Forms (DYS Form 24) Aug-Nov 2005	#30

002158-002816 Security Gate Log of employees entering and leaving #25  
03/01/06-04/29/06, 11/16/18/05

002158-002816 Security Gate Log of employees entering and leaving #25  
03/01/06-04/29/06, 11/16-

002820 Leave Reports (DYS 21) ITU and Mt. Meigs #29

002827-003406 Leave Reports (DYS 21) ITU and Mt. Meigs #29

3407-3439 Policy & Procedure Training

3440-3465 DYS Form 24 Leave request forms

3465-3569 Mr. Lee personnel file on Tera McMillan

3570-  
3597 Recording of Mr. Lee & Ms. McMillan

3598-